

## UNITED STATES DISTRICT COURT

## DISTRICT OF MINNESOTA

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In Re: Bair Hugger Forced Air ) File No. 15-MD-2666  
Warming Devices Products ) (JNE/FLN)  
Liability Litigation )  
November 15, 2018  
Minneapolis, Minnesota  
Courtroom 12W  
9:51 a.m.  
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BEFORE THE HONORABLE JOAN N. ERICKSEN  
UNITED STATES DISTRICT COURT JUDGE

And THE HONORABLE DAVID T. SCHULTZ  
UNITED STATES MAGISTRATE JUDGE

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14 Proceedings recorded by mechanical stenography;  
15 transcript produced by computer.



## P R O C E E D I N G S

(9:51 a.m.)

THE COURT: Please be seated. Hello, everyone.

COUNSEL (collective response): Good morning.

THE COURT: Good morning. Let me just check our phone here.

UNIDENTIFIED SPEAKER ON PHONE: Is there anything happening on this line?

THE COURT: I'm just asking someone on the phone to say something, and I just heard you. We're in session. Were you all able to hear that?

UNIDENTIFIED SPEAKER ON PHONE: Please repeat, is there anything happening on this phone?

THE COURT: This is Judge Ericksen. I'm wondering if anyone on the phone heard the call that we're in session? Anybody hear us? Okay. Once again someone on the phone would you say something please? Would you please say 7, 8, 9? All right. I don't think they hear us, but that's very strange because we heard them.

MS. ZIMMERMAN: I just sent an e-mail to one of the lawyers in my firm to see if they can hear and hopefully they'll respond back.

THE COURT: Lawyers on the phone, are you there?

MR. GORDON: Your Honor, if I may, I just received a text from someone --

1 THE COURT: Yes, hello, Mr. Gordon, how are you?

2 MR. GORDON: -- Ben Gordon, and they cannot hear  
3 you.

4 THE COURT: All right. I'll ask somebody from the  
5 IT department to come up here.

6 Well, if there was ever anything that you wanted  
7 to say without the other people hearing, this is your  
8 chance.

9 MR. SZERLAG: Your Honor, if I might, I can have  
10 my assistant who handles the transactions at our end perhaps  
11 ask everyone to hang up and dial in again.

12 THE COURT: You're talking to the wrong person  
13 about whether that would help.

14 MR. SZERLAG: It's kind of a reboot.

15 THE CLERK: They're coming up.

16 THE COURT: Okay, they're coming up. How about  
17 since we're here, we look at the agenda, and see if there  
18 are some things that we can harmlessly cover and then  
19 summarize once the phone comes back online.

20 MR. BLACKWELL: Judge Ericksen?

21 THE COURT: Hello, Mr. Blackwell.

22 MR. BLACKWELL: I'm sorry, turned out to be kind  
23 of booming.

24 THE COURT: That's because we turned up the all  
25 the volumes in an effort to have them hear us.

1 MR. BLACKWELL: Good morning. One of the things  
2 that we might be able to check off is the proposed amended  
3 schedule for the second round of bellwethers. I don't think  
4 we have any disagreement around the schedule itself and that  
5 is kind of Item Number 1.

6 THE COURT: Okay. I signed that order, but it's  
7 just being held in Cathy's inbox until we had that  
8 discussion here today. I just wanted to -- all right. So  
9 it will be filed. I signed it, and it will be filed  
10 imminently.

11 MR. BLACKWELL: Thank you, Your Honor.

12 THE COURT: Well, how about an update -- well,  
13 let's see hear. Do you want to do an update on the State  
14 Court and Canadian actions? Since you stood up and  
15 announced your presence.

16 MR. SZERLAG: Good morning, Your Honor. David  
17 Szerlag.

18 THE COURT: Good morning, Mr. Szerlag.

19 MR. SZERLAG: I don't think I need the microphone  
20 most times anyway. But in any event, there are 4,982 cases,  
21 active cases presently in the MDL. As far as the state  
22 cases are concerned, I haven't had any update on that. I  
23 have attempted to reach out to state counsel and,  
24 unfortunately, I've had very little success with that. So  
25 perhaps defendants might have some more from their end in

1 regard to those particular cases.

2 THE COURT: So that would be Acosta.

3 MR. SZERLAG: Correct.

4 THE COURT: And that's in Montana. So the  
5 Rossbach law firm is not speaking to you?

6 MR. SZERLAG: You know, we leave messages.

7 THE COURT: Okay. Petitta, same thing, that's in  
8 Hidalgo County, Texas. Hospital defendants settled.

9 Bythwood is in Alabama. Okay. Mr. Blackwell,  
10 does anybody on your team know anything on Acosta?

11 MR. BLACKWELL: Mr. Hulse and Ms. Young might, and  
12 so it looks like we do not, Your Honor.

13 THE COURT: Okay.

14 MR. SZERLAG: What I will do today, Your Honor, is  
15 I'll attempt to reach out again.

16 THE COURT: That's all right. You've done what  
17 you can. What about Canada?

18 MR. SZERLAG: I have quite honestly, Your Honor, I  
19 have not made any attempt to get any information on that.  
20 The last we heard, it was, you know, it's been stalled for,  
21 you know, well over a year, almost two years, I believe.

22 THE COURT: Okay. All right. Thank you very  
23 much. Now, we'll hold off. Hello, thank you.

24 (Short recess for technical phone issues.)

25 MS. THAYER: Hi, everyone. There is an issue on

1 the Court's end, and they're trying to work on it. So stay  
2 on the phone.

3 THE COURT: Well, that was someone on the phone.  
4 Would someone on the phone please say something?

5 (No response.)

6 THE COURT: Who is counsel on the Smith case?

7 MR. HULSE: Mr. Webb from Brown & Croupon, who is  
8 not present in the courtroom.

9 THE COURT: I'm talking now to counsel in Smith,  
10 which is 17CV2889. Would you let me know if you are able to  
11 hear?

12 MS. THAYER: Good morning, Judge Ericksen.

13 THE COURT: Good morning. Could you identify  
14 yourself, please?

15 MS. ZIMMERMAN: I believe that is Ms. Thayer from  
16 your office. I sent her an email asking that she say, "Good  
17 morning, Judge Ericksen," so we could figure out if this is  
18 a one way. But they can't hear you.

19 MR. SZERLAG: She just texted me. She still  
20 couldn't hear the Court.

21 THE COURT: Okay. I'm just going to talk while  
22 you keep doing that. As I understand it, there is no longer  
23 a motion seeking dismissal in Brown, which is 17-4778;  
24 Guenther, 18-207; Amador, 18-318; Smith, 18-348; Brann,  
25 18-481; and Manheim, 18-1456. Defendants, is that correct,

1       you are no longer seeking dismissal?

2               MR. HULSE: That's correct, Your Honor.

3               THE COURT: Thank you. There is a stipulation to  
4       dismiss with prejudice Salinas, 17-3549; Matteo, 18-1455;  
5       and Clark, 17-5047, correct?

6               MR. HULSE: That's correct, Your Honor.

7               THE COURT: Someone on the plaintiffs' side; is  
8       that correct?

9               MS. ZIMMERMAN: That is consistent with our  
10       records as well, Your Honor.

11              THE COURT: Okay. And so that leaves Wega,  
12       Swatchick, Davis, Owens and Winn, and we'll wait to see.  
13       Counsel in the courtroom on any of those five cases?

14              MS. ZIMMERMAN: Yes, Your Honor. I'm counsel for  
15       Lou Todd Swatchick, and that is 18CV1435.

16              THE COURT: Okay.

17              MS. ZIMMERMAN: Despite our best repeated efforts,  
18       she has not returned the plaintiffs' fact sheet, so we do  
19       not oppose their motion.

20              THE COURT: Okay. So that motion is granted in  
21       Swatchick v. 3M, 18CV1435 is dismissed with prejudice.

22              MR. SZERLAG: Your Honor, I just have going  
23       through my notes here and perhaps Mr. Hulse can enlighten us  
24       here on Winn, I have that there was a response filed on  
25       11-8.

1 MR. HULSE: That's correct.

2 MR. SZERLAG: Okay. Are we still moving on that  
3 or?

4 MR. HULSE: Well, they didn't oppose the motion on  
5 the merits so, but without counsel on the phone, I don't  
6 know that we can proceed.

7 MR. SZERLAG: Okay.

8 THE CLERK: He thinks it's an AT&T problem. He's  
9 going to look into it.

10 THE COURT: Someone should send AT&T a bill. This  
11 is the difference between sending a bill and getting a bill  
12 paid, right?

13 MR. BLACKWELL: We know that difference too, Your  
14 Honor.

15 THE COURT: So Axline, we have counsel for Axline  
16 here, right?

17 MS. ZIMMERMAN: Yes, Your Honor. We've noticed  
18 appearance in Axline.

19 THE COURT: And what's the issue there? I guess  
20 nothing right now. There's going to be a motion?

21 MS. ZIMMERMAN: Yes, Your Honor. So the remaining  
22 claims after the motion to amend, motion for leave to amend  
23 the Complaint was denied, had to do with the Minnesota  
24 Consumer Protection claims and that sort of thing. Because  
25 summary judgment on those issues will be appealed in the

1 Gareis matter, we had requested that we dismiss those claims  
2 in Axline without prejudice pending essentially what the  
3 Eighth Circuit does with the appeal on Gareis.

4 Defense counsel has indicated that they will  
5 oppose a motion to dismiss without prejudice those remaining  
6 claims. So we're going to bring a formal motion to dismiss  
7 those claims without prejudice.

8 THE COURT: Okay. Well, we really need the  
9 lawyers, don't we, on the remaining matters, which are the  
10 PFS related dismissals.

11 Okay, I'm just trying to think of how we can  
12 productively use your time since you're all here, and you  
13 all have important work to do. We'll take a break while we  
14 try to work out the telephone situation. We'll try to --  
15 what do you think, are we better off setting a time or --

16 MR. BLACKWELL: Your Honor, maybe if we just check  
17 back in ten minutes to see where we are.

18 THE COURT: Okay. I was just thinking that you  
19 could have a conversation with Judge Schultz about the  
20 bucketizing process, and you go ahead and use my chambers  
21 for that.

22 MR. BLACKWELL: Very good.

23 THE COURT: So you don't have to do it in the  
24 courtroom.

25 MR. BLACKWELL: Very good, Your Honor.



1 THE COURT: All right. And we will aim for being  
2 back in the courtroom -- well, I guess the people on the  
3 phone can't hear me anyway, but if you could hear me, I will  
4 say we'll try back at 10:30.

5 MR. SZERLAG: We'll contact everyone again at  
6 10:30.

7 THE COURT: All right. We're in recess and we'll  
8 reconvene or you will back stage.

9 (Short recess at 10:12 a.m.)

10

11 IN OPEN COURT

12 (10:40 a.m.)

13 THE COURT: Welcome back. Please be seated. Let  
14 me try again with the callers, would someone on the phone  
15 please let me know whether you can hear me?

16 UNIDENTIFIED COUNSEL: Yes, Your Honor.

17 THE COURT: All right. Apologies for the  
18 technical problem last time. Apparently, the system needed  
19 to be shut down and the hood needed to be slammed and the  
20 tires needed to be kicked and that's all been done.

21 What you missed was we did an update on the State  
22 Court matters. We discussed the Canadian action. We talked  
23 about -- I guess that's really about it.

24 One case was dismissed and that's Swatchick v. 3M,  
25 18CV1435. Counsel on that matter was in court.

1           So one of the matters that we have on the agenda  
2           for today involves the Smith case. Smith v. 3M, and that is  
3           17CV2889. Is counsel for that -- plaintiffs' counsel for  
4           that case on the line?

5           MR. WEBB: Yes, Your Honor. Seth Webb for  
6           plaintiffs.

7           THE COURT: And the court reporter is asking you  
8           to repeat your name.

9           MR. WEBB: Seth, S-E-T-H, Webb, WEBB.

10          THE COURT: Thank you, Mr. Webb. Mr. Hulse?

11          MR. HULSE: Your Honor, we move to dismiss this  
12          case under PTO 23 because the suggestion of death was filed  
13          22 days late, beyond the 90 days provided for the filing of  
14          the suggestion of death under that pretrial order. This is  
15          a case like the Bellande case involves -- has a living  
16          spouse. There's been no showing of impossibility or  
17          excusable neglect in missing the Court's deadline. So as  
18          following the Court's prior decisions and guidance, we're  
19          asking for this case to be dismissed with prejudice.

20          THE COURT: In Bellande, how many days late was  
21          the Bellande? I can't remember.

22          MR. HULSE: It was two months. It was suggestion  
23          of death, so that's later than this.

24          THE COURT: There's another basis in this case,  
25          the Smith case, on which you move to dismiss and that has to

1 do with the New Jersey code.

2 MR. HULSE: Right.

3 THE COURT: I did not see that there have been any  
4 response from plaintiffs to that substantive objection. If  
5 the PTO 23 problem could be overcome or forgiven in this  
6 case, then we run into that. So I didn't see a response,  
7 and you, Mr. Hulse, didn't see a response.

8 Mr. Webb, was there a response from the plaintiff  
9 on the issue about the New Jersey, the application of the  
10 New Jersey survivorship statute?

11 MR. WEBB: Quite honestly, Your Honor, I was not  
12 aware that argument had been made. Ms. Smith has been  
13 appointed administrator of the estate. I don't know exactly  
14 what that objection could be.

15 THE COURT: What they put in their papers was that  
16 that statute addresses wrongful death actions but not  
17 survivorship actions and that it doesn't establish that the  
18 appointment as administrator entitles Mrs. Smith to continue  
19 the claims of Mr. Smith. So that's the argument that I'm  
20 wondering if there was ever a response to.

21 MR. WEBB: I did not respond to it, and  
22 admittedly, I'm probably not completely prepared to do so  
23 today. What I can tell you is what I believe to be the  
24 case, which is that in New Jersey if you die intestate,  
25 without a will, that the appropriate mechanism to administer

1 the estate is to be appointed administrator instead of a  
2 personal representative. A personal representative would  
3 administer if the person had a will. But that's, once  
4 again, I'm not prepared to argue that today.

5 THE COURT: But this was in the defendant's motion  
6 papers.

7 MR. WEBB: I'm sorry. My understanding was the  
8 objection was over PTO 23.

9 THE COURT: But, well, not to put you overly on  
10 the spot, but you must have had access to the defendant's  
11 motion to dismiss.

12 MR. WEBB: I do.

13 MR. HULSE: Your Honor, for clarity sake, I think  
14 we raised that argument in our opposition to the  
15 substitution motion. I may have raised it in the motion to  
16 dismiss too, but I certainly know that we raised it in the  
17 opposition to the motion to substitute.

18 MR. WEBB: I'm looking at the dismissal right now,  
19 and I don't see it. That's my understanding of what we're  
20 here for.

21 MR. HULSE: So because what happened is in the --  
22 so we moved to dismiss based on the late suggestion of  
23 death. Plaintiffs filed a motion to substitute. We oppose  
24 that based on, A, late suggestion of death; B, the fact that  
25 the statute that they cited, and they're obligated to

1 demonstrate, affirmatively demonstrate authorization under  
2 state law is clearly the wrongful death statute. It's not a  
3 survivorship statute.

4 THE COURT: And there was never a response to  
5 that?

6 MR. HULSE: No response, Your Honor.

7 THE COURT: Mr. Webb, I'm going to forgive the  
8 late filing of the suggestion of death, and I'm going to  
9 overlook the fact that you didn't file any response to this  
10 argument, and I'm going to give you one week to respond to  
11 the defendant's argument that there's not proper  
12 documentation of the New Jersey authorization for Mrs.  
13 Smith to continue the claims of Mr. Smith. So one week from  
14 today we'll look for a response from that and then we'll  
15 proceed --

16 MR. WEBB: Thank you, Your Honor.

17 THE COURT: -- according to what we got.

18 All right. Thank you, Mr. Webb. Thank you,  
19 Mr. Hulse.

20 MR. HULSE: Thank you, Your Honor.

21 THE COURT: All right. Wega v. 3M, 18CV00264.  
22 Counsel on that case, are you on the line?

23 MR. WALKER: Good morning, Your Honor. Travis  
24 Walker with the law firm of Travis Walker on behalf of the  
25 plaintiff Mr. Wega.

1 THE COURT: And that was Travis Walker, right?

2 MR. WALKER: Yes, ma'am. T-r-a-v-i-s W-a-l-k-e-r.

3 THE COURT: Mr. Hulse?

4 MR. HULSE: Yes, Your Honor. So this is a case  
5 where Mr. Walker, counsel for Wega, indicates that he has  
6 not been able to have contact with his client in several  
7 months. We did receive the other day, nonetheless, a PFS  
8 that is significantly incomplete, lacks a proper  
9 authorization, does have a verification but one signed more  
10 than three months ago by the plaintiff, so it's not a  
11 contemporaneous one. So we think it's clearly noncompliant  
12 with the requirements of PTO 14, and the case should be  
13 dismissed.

14 THE COURT: Mr. Walker, any response?

15 MR. WALKER: Yes, Your Honor. As the docket will  
16 show, Your Honor, we've had some difficulties getting in  
17 contact with the client. The motion to dismiss was filed by  
18 Mr. Hulse on November 1st. In an abundance of caution, our  
19 office did file a motion for extension of time in response  
20 to the motion to dismiss on November 9th, requesting 60 days  
21 additional to get the PFS filed. Subsequently, after  
22 diligent efforts by my office, we were able to --

23 THE COURT: Hold on, could you speak both louder  
24 and slower? We've got that there was a request for the 60  
25 days additional to get the PFS filed. That's the last thing

1 we were able to hear.

2 MR. WALKER: I apologize, Your Honor. I'll speak  
3 more eloquently and a little slower.

4 THE COURT: Not eloquently because that might  
5 involve bigger words.

6 MR. WALKER: Thank you, Your Honor. So the motion  
7 to dismiss was filed on November 1st. We filed that  
8 response motion for extension of time requesting 60  
9 additional days to get the initial PFS filed. Our office  
10 after diligent efforts was able to obtain the PFS. We did  
11 file the PFS --

12 THE COURT: You were or were not?

13 MR. WALKER: We were.

14 THE COURT: Okay.

15 MR. WALKER: And so while I did reach out to  
16 opposing counsel, I believe it was yesterday, requesting  
17 removal of this matter from the docket because of the filing  
18 of the PFS, we did receive a response in accordance with his  
19 argument made today that he has concerns about the PFS.  
20 But, Your Honor, respectfully that's the intent of PTO 14  
21 once the plaintiff has filed the PFS, it is defense  
22 counsel's responsibility to file the response and notice of  
23 deficiency, and we're more than happy to be compliant with  
24 that, Your Honor.

25 So, obviously, respectfully, we filed the PFS with

1 the authorization and respectfully request denial of the  
2 motion to dismiss.

3 THE COURT: Are you of the opinion that the PFS  
4 that was filed, was it yesterday?

5 MR. WALKER: My record says November 14th, Your  
6 Honor. So, yes, yesterday.

7 THE COURT: Okay, so today is the 15th, so  
8 yesterday. And is it your position that that is complete  
9 and accurate and satisfies all the requirements?

10 MR. WALKER: We believe it's in compliance with  
11 PTO 14. We believe that there may be issues, of course,  
12 that defense counsel may raise but we're more than happy to  
13 go to the PTO 14 process to resolve those issues, Your  
14 Honor.

15 THE COURT: Let me just see if I can see a copy of  
16 that PFS. Mr. Hulse is looking --

17 MR. HULSE: I don't believe I have that one with  
18 me, Your Honor, but I can speak to the puzzle of this, which  
19 is that we have a court filing from Mr. Walker that says he  
20 hasn't had any contact with his client in months. The PFS  
21 that was submitted was, as we explained to him, radically  
22 incomplete. It had an authorization from a different  
23 litigation that expired years ago, and it had a verification  
24 that was signed by the plaintiffs months ago.

25 So what it appears to us is maybe they had the



1 client before they lost contact with him pre-sign a  
2 verification and then they submitted the information that  
3 they have. That's at least how it appears to us.

4 But no matter what, it certainly doesn't -- it's  
5 not complete. I think we can all agree on that and that the  
6 authorization provided was not for this litigation.

7 THE COURT: I will take a look at the PFS that was  
8 submitted and make a determination based on that. The PFS  
9 was due back at the end of April, right?

10 MR. HULSE: Correct.

11 THE COURT: The case was filed end of January?

12 MR. HULSE: Correct, Your Honor.

13 THE COURT: All right. So from April until now  
14 there's been more than enough time to get it squared away.  
15 If it's all squared away and everything is fine now, that's  
16 all well and good, but we're not going to continue the  
17 process of trying to get this. And if it is what you say,  
18 Mr. Hulse, then that doesn't sound like it would be  
19 adequate, but go ahead and submit a copy and we'll take a  
20 look at it and make a ruling based on that.

21 MR. HULSE: Will do so, Your Honor.

22 THE COURT: And thank you, Mr. Walker.

23 The next case is Davis, 18CV1542. Counsel for  
24 Davis, are you here?

25 MS. KRAFT: Kristine Kraft Schlichter, Bogard &

1 Denton, and I represent the plaintiff Harry Davis.

2 THE COURT: And my records show that there was no  
3 response filed on this. Is that accurate?

4 MS. KRAFT: That is correct, Your Honor, and the  
5 reason we did not file a response is because we did submit a  
6 PFS through the portal on November 5th, and I guess we  
7 wrongfully assumed that it would be taken off the motion to  
8 dismiss docket, but I will note that there are deficiencies  
9 with the PFS that was submitted. I can explain that to the  
10 Court if you would like to hear it at this point.

11 THE COURT: Mr. Hulse, did you receive the PFS?

12 MR. HULSE: Yes, we did, Your Honor. And the  
13 reason we kept it on the motion is it did not include an  
14 authorization or verification from the plaintiff.

15 MS. KRAFT: Yes, that is correct, and our  
16 understanding of the PTO was that by submitting the PFS,  
17 then the time for deficiencies would, you know, begin to run  
18 from that point. And by way of background, this is an issue  
19 with client communication. We had regular communication  
20 with this particular client through September, I think it's  
21 September 2nd, yes. The case was filed June 4th, and we had  
22 regular communication with this -- no, I'm sorry -- the last  
23 communication was September 17th. That was the last  
24 communication.

25 We were able to obtain all information to complete

1 the PFS except obtain the signature page from him to the PFS  
2 and the authorization, and then there's two questions  
3 related to marriage and dates of birth and children that we  
4 were unable to finalize.

5 He last noted that he has health complications,  
6 and we have tried diligently to continue reaching out to  
7 him, family members, et cetera, in order to, you know,  
8 obtain the final review based on the information provided to  
9 us by the client and to obtain the authorizations and that  
10 there's a history, and that's why we would request  
11 additional time on behalf of the client to continue to make  
12 contact or try to make contact with him or a family member  
13 in order to get this finalized. It's very, very close.

14 THE COURT: So everything is all filled out and  
15 good to go except for the verification page?

16 MS. KRAFT: Yes. Well, except those two  
17 questions, because at the time we last communicated with  
18 him, we just didn't know the dates of birth and the date of  
19 a prior marriage and then that's when we just couldn't get  
20 ahold of him after that and tried and tried.

21 THE COURT: How long do you think it's going to  
22 take you to get ahold of him and get it all completed?

23 MS. KRAFT: Well, I will say I would appreciate  
24 another 45 days.

25 THE COURT: Too long, too long.

1 MS. KRAFT: Okay, Twenty days then. We would like  
2 to continue to document the file. We have not let up our  
3 efforts to continue --

4 THE COURT: All right, okay, 20 days.

5 MS. KRAFT: Thank you, Your Honor. I appreciate  
6 it.

7 THE COURT: Owens v. 3M 18CV275. Counsel for  
8 Owens, are you on the line?

9 MR. DWECK: Yes, Your Honor, this is Morris Dweck  
10 appearing for plaintiff.

11 THE COURT: Mr. Dweck? All right, Mr. Hulse.

12 MR. HULSE: Your Honor, actually Mr. Dweck sent us  
13 an email yesterday indicating, he states, "We have every  
14 intention in dismissing and letting our client know we  
15 recommend dismissing." This came out of the fact that we  
16 pointed out to Mr. Dweck that the medical records that were  
17 provided as substantiation of product ID indicate that the  
18 Bair Hugger wasn't used during surgery.

19 THE COURT: Oh, I see. Okay. Well, let me just  
20 hear from Mr. Dweck because that might bring an end to this.

21 Mr. Dweck, is that correct?

22 MR. DWECK: Yes, Your Honor. We did submit the  
23 PFS, but it does appear that it was not the Bair Hugger, so  
24 we just want to confer with our client and get their  
25 permission to dismiss and then we told counsel we'd be happy

1 to dismiss it.

2 THE COURT: Okay. Would you rather do that? Or  
3 I'll dismiss it right now.

4 MR. HULSE: And that would be our --

5 THE COURT: And then you can communicate to your  
6 client that the judge did it, that the mean judge did it.

7 MR. DWECK: I mean we definitely prefer to, you  
8 know, have the client be aware of the issue first and get  
9 them on board.

10 THE COURT: The case will be dismissed with  
11 prejudice on November 20th. So that gives you time, right?

12 MR. DWECK: Yes, Your Honor. We reached out by a  
13 few different means already but hopefully by then we will be  
14 able to get in contact with our client.

15 THE COURT: Okay. Thanks much. And, finally, we  
16 have Winn v. 3M, 18CV891. Counsel for Winn, are you on the  
17 line?

18 MS. WHITE: Yes, Your Honor. This is Caroline  
19 White with the Murray law firm for plaintiff Robert Winn.

20 THE COURT: Okay, Ms. White. Mr. Hulse?

21 MR. HULSE: This looks like many of the cases  
22 we've seen before, the plaintiff's counsel have attempted to  
23 contact their client but have been unable to, and so they're  
24 not challenging our motion on the merits.

25 THE COURT: Ms. White, is that correct?

1 MS. WHITE: Yes, Your Honor. We've had problems  
2 getting in touch with Mr. Winn, and we just respectfully ask  
3 that we either get extra time to try and contact him or  
4 alternatively if you do decide to dismiss his case to  
5 dismiss it without prejudice.

6 THE COURT: What's the date that the case was  
7 filed?

8 MR. HULSE: I don't know, Your Honor.

9 MS. WHITE: March 29th.

10 THE COURT: March 29th?

11 MS. WHITE: 2018.

12 THE COURT: Defendant's motion to dismiss with  
13 prejudice is granted. Thank you, Ms. White and Mr. Hulse.

14 MR. HULSE: Thank you, Your Honor.

15 THE COURT: All right. And as we said before,  
16 Brown, Guenther, Amador, Smith. Smith is 18CV348; Brann and  
17 Manheim, the defendant has withdrawn its motion. And I have  
18 that there has been a stipulation to dismissal with  
19 prejudice in Salinas, 17-3549; Matteo, 18-1455; and Clark,  
20 17-5047. Anybody on the line have anything they want to say  
21 or anything to the contrary?

22 All right. Is there anything else for us to  
23 discuss at this status conference? I've looked through the  
24 agenda. Ms. Zimmerman?

25 MS. ZIMMERMAN: Thank you, Your Honor. Turning to

1 the page 4 status of discovery, the bellwether second round,  
2 I did want to re-raise an issue with respect to the  
3 remaining cases that are being worked up. I think we  
4 flagged this issue for the Court at the last status  
5 conference as well.

6 So there are four cases remaining. Goodpaster and  
7 Trombley are two of them. They are both Ohio cases, so we  
8 have some of the same issues that we would have had in  
9 Axline. We have approached defense counsel to request that  
10 they would stipulate to an Amended Complaint. They have  
11 declined to do so. There are now motions seeking the  
12 Courts's leave to amend to do the same stuff we did in  
13 Axline.

14 I believe I know that the Goodpaster motion was  
15 filed on Monday. I think the Trombley case was filed this  
16 week as well. Is that true, Mr. Gordon?

17 MR. GORDON: My understanding is it's been filed  
18 or will be filed imminently, maybe today.

19 MS. ZIMMERMAN: So that's the status of those.  
20 And given that and in light of the Court's rulings on  
21 Axline, the plaintiffs have suggested that it might be a  
22 more efficient use of everybody's time on those cases if  
23 we're waiting to hear a decision on the motion for leave to  
24 amend, that taking on the cost for everybody involved of  
25 traveling to Ohio and deposing these plaintiffs is maybe not

1 an efficient use of everybody's time. Defendants have up to  
2 this point insisted that we go forward with these  
3 depositions. We've gotten dates. We will do that, but I  
4 did want to flag that issue for the Court's awareness.

5 THE COURT: Okay, flagged.

6 MS. ZIMMERMAN: So flagged.

7 THE COURT: Anything else?

8 MS. ZIMMERMAN: I don't believe so, Your Honor.

9 MR. BLACKWELL: Nothing further from us, Your  
10 Honor.

11 THE COURT: All right. We are in recess.

12 (Court adjourned at 11:04 a.m.)

13  
14 \* \* \* \* \*

15  
16  
17 I, Maria V. Weinbeck, certify that the foregoing is  
18 a correct transcript from the record of proceedings in the  
19 above-entitled matter.

20  
21 Certified by: s/ Maria V. Weinbeck

22 Maria V. Weinbeck, RMR-FCRR  
23  
24  
25